

MEMORANDUM OF UNDERSTANDING  
between  
USDA-FOREST SERVICE REGION 1  
and  
ENVIRONMENTAL PROTECTION AGENCY REGION VIII  
MONTANA OFFICE  
concerning  
BLOCK P TAILINGS SITE

  
1197104 - R8 SDMS

RECITALS

- A. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., the President is responsible for responding to releases of hazardous substances to protect the public health or welfare or the environment.
- B. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated authority to conduct various activities under CERCLA, including investigations and response activities (42 U.S.C. 9604), cost recovery (42 U.S.C. 9607), and entering into agreements with potentially responsible parties (PRPs) to perform investigations (42 U.S.C. 9622(d)(3)), to several executive departments and agencies, including the Environmental Protection Agency (EPA) and the United States Department of Agriculture (USDA).
- C. USDA has redelegated its authorities under Executive Order 12580 to the USDA Forest Service (FS) with respect to land and facilities under Forest Service authority. 7 C.F.R. 2.60(a)(40).
- D. The FS administers National Forest System land and is, with certain limitations, delegated the President's CERCLA authority where a release of a hazardous substance is on or the sole source of the release is from a facility under the jurisdiction, custody or control of the FS. Executive Order 12580, secs. 2(e)(1) and 4(b)(1). Executive Order 13016 amends Executive Order 12580 to authorize FS use of CERCLA Section 106 authority to address releases or threats of releases of hazardous substances affecting lands and natural resources under the FS' custody, jurisdiction and control, subject to the concurrence of the Administrator of the EPA, Executive Order 13016, Section 2. The FS's CERCLA role is also recognized in various provisions of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). 40 C.F.R. Part 300.
- E. Subject to the delegations to the FS described in the preceding Recital D, the President's CERCLA authority related to National Forest System Land and adjoining private land is generally delegated to EPA. Executive Order 12580, secs. (2)(g) and 4(d). The authority

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delegated to EPA includes the President's authority under 42 USC 9606(a) to issue such orders as may be necessary to protect public health and welfare and the environmental (Unilateral Administrative Orders or UAOs). Executive Order 12580, sec. 4(d)(1).

- F. The Block P tailings Site (the Site) is located approximately 40 miles southeast of Great Falls, Montana. Part of the Site is located within the established boundaries of the Lewis and Clark National Forest in Montana, and part of the Site is located on privately owned land.
- G. The FS and EPA ( jointly, the "two Agencies") have entered into an Administrative Order on Consent (AOC), dated September 24 and 28, 1998, with The Doe Run Resources Corporation (Doe Run), a PRP at the Site, for completion of an EE/CA for the Site, including both the private and National Forest System land, and may jointly sign other AOCs with Doe Run. EPA is a party to this AOC because part of the Site is on private lands. By entering into this agreement, EPA is not delegating any CERCLA authority to the FS.
- H. The two Agencies recognize that for Doe Run to complete the EE/CA effectively and expeditiously, the agencies must coordinate their respective CERCLA authorities and communicate a unified position to the PRP. Any disputes between EPA and the FS require rapid resolution to avoid delaying completion of the EE/CA.
- I. The purpose of this MOU is to provide a framework for the coordination of the roles of each agency in the oversight, preparation and implementation of the EE/CA and for the resolution of disputes between EPA and the FS in their oversight of any joint AOCs. The FS will be the lead agency for overseeing EE/CA activities by Doe Run.
- J. The EPA and the FS have designated the following positions and/or persons who will be involved with the day to day coordination, communication and decision making regarding performance and oversight of the EE/CA:

FS: Robin Strathy

EPA: Rosemary Rowe

#### AGREEMENTS

1. Each Agency will supply its own On-Scene Coordinator (OSC) and/or project manager (PM), as provided in Recital J, to oversee the completion of the EE/CA at the Site. If either the FS or the EPA changes its OSC or PM, the agency making the changes will notify the other as soon as possible.
2. The FS will supply primary documents, including drafts, deliverables, and notices of

meetings and sampling activities related to activities at the Site or any other nonprivileged documents requested to the Montana Department of Environmental Quality (MDEQ) and will take those actions necessary to ensure state participation as provided for in the National Contingency Plan (NCP).

3. The FS's OSC will coordinate with the EPA PM during EE/CA activities and the administration of any AOCs.
  - a. The FS OSC will provide the following to the EPA PM:
    - i. Copies of all documents related to the performance and implementation of the EE/CA or any AOC related thereto. (The FS OSC and the EPA PM will cooperatively determine the degree and means of the EPA PM's review of documents and decisions other than those listed in paragraph 9 of this MOU.)
    - ii. Reasonable prior notice of, and an opportunity to participate in any scheduled meetings, including teleconferences, related to EE/CA activities at the Site with the FS contractor, the PRP or others. In most cases, reasonable prior notice shall be considered seven (7) days. In the event a meeting needs to be scheduled on a shorter notice, the FS OSC shall contact the EPA PM and determine EPA's availability prior to contacting the other parties.
    - iii. Reasonable prior notice of EE/CA activities to take place at the Site and an opportunity to participate in oversight of these activities.
  - b. The FS OSC and the EPA PM should communicate regularly, by phone, correspondence and meetings, to review the work status and to resolve any existing or anticipated technical issues. Monthly status calls will be held which will include representatives of the FS, the EPA, and MDEQ. PRP and contractor representatives will be included when appropriate. The calls will update all participants on progress in meeting the project's schedule. During on-site activities, these calls will be held at weekly intervals.

A schedule of activities for the Site will be established by mutual agreement between the two Agencies in consultation and coordination with the State and the PRP. The schedule is for planning purposes only and will not take precedence over or modify any AOC schedule.
  - c. The EPA PM should advise the FS OSC regarding any issues and concerns of special interest to the EPA, in addition to those described in this MOU, so that the OSC can communicate or provide requested information to the PRP.

4. The EPA PM will normally provide comments to the FS OSC within 21 calendar days of receipt from the FS of a deliverable from Doe Run. If the EPA PM determines that additional time is required to provide comments, the EPA PM will discuss the need for a reasonable amount of additional time (normally 15 days or less) with the FS OSC, as soon as that need is identified. The FS OSC may, if necessary, request that EPA agree to a shorter review time for a deliverable. If the EPA PM and the FS OSC cannot agree on a review period, the issue will be elevated immediately with each agency, as provided for in paragraph 10, and agreement shall be reached, if practicable, within 48 hours.
5. The FS OSC will take the lead for administering the AOC, including communicating joint EPA/Forest Service responses to the PRP. The FS will consider all comments submitted by EPA. Should the FS and EPA comments be in disagreement, the FS OSC and EPA PM will meet to discuss and resolve the comments, if possible. If the FS OSC and the EPA PM are unable to resolve a disagreement over comments, the issue shall be resolved pursuant to the dispute resolution provisions of this MOU.
6. The FS OSC and the EPA PM will co-sign or concur on technical correspondence including, but not limited to, comments on deliverables and approval of sampling and analyses plans.
7. Resolution of and communication regarding legal issues will be coordinated among EPA counsel and USDA counsel.
8. Informal dispute resolution, through heightened consultation between the FS OSC and the EPA PM, should resolve disputed technical issues between EPA and the FS. However, if the FS' OSC and EPA's PM do not reach agreement on a technical issue at the Site, EPA and the FS will use the dispute resolution process set forth in Paragraph 10.
9. The FS and EPA will jointly approve and/or concur on the following major decision points regarding response actions at the Site:
  - a. Any deliverable submitted pursuant to any AOCs including, but not limited to:
    - i. The EE/CA Work Plan and Sampling and Analysis Plan.
    - ii. Approval of the Final EE/CA Report to be submitted by Doe Run under the AOC.
    - iii. POLREPs
  - b. The Community Relations Plan.

- c. Selection of any removal alternative at the Site including, but not limited to:
    - i. Selection of cleanup standards at the Site.
    - ii. Selection of the operations and maintenance requirements for the completed response actions at the Site.
    - iii. Selection of ARARs.
  - d. Any Action Memoranda jointly issued by the FS and EPA in connection with the Site.
  - e. Any removal design plans implementing any jointly selected removal alternative.
  - f. Any certifications of completion issued for response actions at the Site.
10. If the FS OSC and the EPA PM do not reach agreement on a decision point listed in paragraph 9 or for other disputes between the two Agencies arising from activities at the Site, the issue will be elevated to the OSC's and EPA's PM direct supervisors within seven days. If the FS and EPA first line supervisors are unable to reach a decision, the dispute will be further elevated to the Regional Forester for the Forest Service and the Montana Office Director for EPA. If the Regional Forester and the Montana Office Director are unable to resolve the dispute, they can decide to elevate the issue further within each agency.
11. The dispute resolution process described in paragraph 10 of this MOU is separate from the dispute resolution process described in Section XVI of the AOC with Doe Run. EPA and the FS shall implement Section XVI of the AOC dispute resolution as follows:
- a. The FS and/or EPA will decide disputes raised by Doe Run under this AOC as provided in the AOC and this MOU.
  - b. If a disputed issue under the AOC is one of the major decision points described in Paragraph 9 of this MOU and a dispute arises between the FS and EPA during the AOC dispute resolution process, EPA may invoke the dispute resolution process provided in this MOU, unless the issue has already been disputed separately under this MOU. If the AOC and MOU dispute resolution processes are proceeding simultaneously, the AOC dispute resolution process may not reach a final decision in a manner inconsistent with the MOU dispute resolution process.
12. If a situation arises in which either the FS or the EPA believes that stipulated penalties should be imposed on Doe Run pursuant to Section XIX of the EE/CA AOC or to any other jointly signed AOC for the Site, the agency making that determination will notify

the other agency immediately. If the FS OSC and the EPA PM, in consultation with the attorney for each program, cannot agree on whether to pursue stipulated penalties, the dispute resolution process described in paragraph 10 will be followed. Unless otherwise agreed to by the Agencies, any penalties will go to the FS.

13. The FS and EPA each reserve all of their rights and authorities under CERCLA, the NCP and applicable Executive Orders, including Executive Order 12580. No provision of this MOU may be used to limit those rights and authorities.
14. This MOU is not a fund obligating document. Any contribution of funds by either the FS or EPA is solely at the discretion of the agency and will be handled in accordance with applicable laws, procedures and agency policies and guidance.
15. This MOU shall not be deemed to create any right, benefit, or trust obligation, either substantive or procedural, enforceable by any person or entity in any court against the United States, its agencies, its officers, or any other person.
16. This MOU is effective upon the date signed by the last of the parties.
17. This MOU terminates upon joint approval by the FS and EPA of the Notice of Completion to be submitted by Doe Run pursuant to the AOC and any other notices of or certifications of completions that may be required in connection with any subsequent agreements jointly signed by EPA and the FS for the Site. Prior to that, this MOU may be terminated or modified only upon the agreement of both Agencies. Upon the mutual agreement of the FS and EPA, this MOU may be revised and/or extended to cover the implementation of the selected removal action.
18. This MOU may be executed in counterparts by each of the signatories, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE

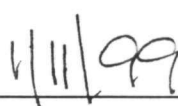
By: Kathleen A. Mollister  
Dale Bosworth  
Regional Forester  
U.S.D.A. Forest Service  
Region 1 *rx/pip*

1-15-99  
Date

ENVIRONMENTAL PROTECTION AGENCY

By: 

John F. Wardell  
Director  
Montana Office  
EPA Region VIII

  
Date